

417



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/42UH/LRM/2014/0002

Property : 51 High Street,
Lowestoft,
NR32 1JA

Applicant : 51 High Street (Lowestoft) RTM
Co. Ltd.

Respondent : 51 High Street Ltd. (dissolved)

Date of Application : 15th February 2014

Type of Application : For an Order that the Applicant is
entitled to acquire the right to
manage the property (Section 85(2)
Commonhold and Leasehold Reform
Act 2002 (“the 2002 Act”)

The Tribunal : Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS

DECISION

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1. This Application fails and the Applicant therefore does not acquire the right to manage the property.

Reasons

Introduction

2. The Applicant is a right to manage company (“RTM”). The Respondent was the registered proprietor of the freehold title but is a company in liquidation. As part of its application, the Applicant has produced a helpful letter from the well known solicitors Burges Salmon addressed to Peter Aldous MP and dated 29th November 2012. Those solicitors say that they act for The Crown Estate.
3. The letter confirms that when a company is dissolved, its assets pass initially to the Treasury Solicitor’s office as *bona vacantia*. The Crown can disclaim the property, as happened in this case. In those circumstances, any freehold property is deemed to be subject to *escheat* to the Crown and falls to be dealt with by the Crown Estate. The

solicitors say that the Crown Estate cannot undertake any steps to repair or maintain the property.

The Law

4. Section 85 of the 2002 Act says that it applies "*where a RTM company wishing to acquire the right to manage premises (a) complies with subsection (4) or (5) of section 79, and (b) would not have been precluded from giving a valid notice under that section with respect to the premises, but cannot find or ascertain the identity of any of the persons to whom the claim notice would be required to be given*". In those circumstances, it may apply to this Tribunal for an order that such company is to acquire the right to manage such premises.
5. Subsections (4) and (5) of section 79 say that if there are only 2 qualifying tenants (as defined by the 2002 Act) then they both have to be members of the RTM. If there are more, then not less than one half must be members.

Procedure

6. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the Applicant that (a) a determination would be made on the basis of a consideration of the papers including its written representations on or after 4th April 2014 and (b) an oral hearing would be held if one was requested before that date. No such request was received.
7. However, the Tribunal's directions also sought to address the other legal issue raised by the 2002 Act because the application did not make it clear how many qualifying tenants there were. It was therefore ordered that the Applicant must, by the 21st March 2014, file with the Tribunal a statement setting out how it qualified i.e. "*how many qualifying tenants are there, what is the evidence that they are (e.g. copy entries from the Land Registry), who are the members of the applicant company (a copy of the members' register) and copies of Notices of Invitation to Participate to all non participating tenants, when they were served and any replies*". There was no response to this direction.

Conclusions

8. If the RTM had satisfied the qualification requirements, then an order would probably have been made that it would acquire the right to manage the premises. However, the statutory requirements are mandatory and cannot just be ignored or overlooked by the Tribunal. If this RTM had been given the right to manage and it should be discovered that it did not 'represent' the majority of the tenants, then the majority of the tenants would, rightly, feel aggrieved because the 2002 Act prevents another RTM being formed to manage property already managed by an RTM.
9. The Tribunal office made considerable efforts to contact the Applicant to find out why nothing had been heard but was unable to obtain a

response. The inevitable consequence of this is that this application must be refused.

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Bruce Edgington
Regional Judge
4th April 2014